

SUBCHAPTER III. PROCEDURES.

§ 2-1403.01. Powers of Office and Commission; annual report by Mayor.

- (a) The activities of the Office and the Commission, under the provisions of this chapter, shall be considered investigations or examinations of municipal matters, within the meaning of §5-1021; and the Commission, the individual members thereof, and the Director, shall possess the powers vested in the Council of the District of Columbia.
- (b) The Office is hereby empowered to undertake its own investigations and public hearings on any racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry, and disorder; and on any form of, or reason for, discrimination, in accordance with §§ 2-1401.01 and 2-1402.01, against any person, group of persons, organization, or corporations, whether practiced by private persons, associations, corporations, city officials, or city agencies; for the purpose of making appropriate recommendations for action, including legislation, against such discrimination.
- (c) The Office and the Commission may make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the provisions of this chapter. Such rules and procedures and amendments thereto shall be adopted and promulgated in accordance with procedures promulgated pursuant to the D.C. Administrative Procedure Act (§ 2-501. et seq.).
- (d) In taking any action authorized or required by the provisions of this chapter, the Commission may act through panels or a division of not less than 3 of its members, a majority of whom shall constitute a quorum.
- (e) The Mayor shall recommend to the Council any additional regulations.
- (f) Investigations relating to the enforcement of provisions of this chapter shall be given priority over all other duties and activities of the Office.
- (g) The Mayor shall report annually to the Council as to the progress with regard to the enforcement of this chapter, and any other activity related to the field of human rights deemed valuable to the Council in the pursuit of its responsibilities.
- (h) The Office and the Commission shall enforce §§ 34-1240, 34-1241, 34-1242, 34-1243 and any other human rights provisions of Chapter 12 of Title 34.

§ 2-1403.02. Complaints; independent action by other District agencies.

Nothing in the provisions of this chapter is deemed to relieve any agency or authority of the

government of the District of its obligation to take immediate and independent action regarding a matter filed with it, in accord with its jurisdiction, that also may be the subject of a complaint filed with the Office.

§ 2-1403.03. Establishment of procedure for complaints filed against District government.

- (a) The Mayor shall establish rules of procedure for the investigation, conciliation, and hearing of administrative complaints filed against District government agencies, officials and employees alleging violations of this chapter. The final administrative determination in such matters shall be made by the Mayor or his designee.
- (b) A person claiming to be aggrieved by an unlawful discriminatory practice on the part of District government agencies, officials, or employees may elect to file an administrative complaint under the rules of procedure established by the Mayor under this section or a civil action in a court of competent jurisdiction under section 316 [§2-1403.16]

§ 2-1403.04. Filing of complaints and mediation.

- (a) Any person or organization, whether or not an aggrieved party, may file with the Office a complaint of a violation of the provisions of this chapter, including a complaint of general discrimination, unrelated to a specific person or instance. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Office. The Director, sua sponte, may investigate individual instances and patterns of conduct prohibited by the provisions of this chapter and may initiate complaints in connection therewith. Any complaint under this chapter shall be filed with the Office within 1 year of the occurrence of the unlawful discriminatory practice, or the discovery thereof, except as may be modified in accordance with § 2-1403.03.
- (b) Complaints filed with the Office under the provisions of this chapter may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings as specified in § 2-1403.05, except that the circumstances accompanying said withdrawal may be fully investigated by the Office.
- (c) A mediation program shall be established and all complaints shall be mediated before the Office commences a full investigation. During the mediation the parties shall discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. The Office shall grant the parties up to 45 days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, the Office shall proceed with an investigation of the

complaint.

- (d) Complaints filed with the Office alleging unlawful discrimination in residential real estate transactions or violations of FHA, shall be served on the complainant and respondent within 5 days of filing, with a notice identifying the alleged discriminatory practice and advising the parties of their procedural rights and obligations under this chapter and FHA. The Office shall refer the complaint for mediation, but shall begin investigating the complaint within 30 days of its filing if the parties fail to reach an agreement.

§ 2-1403.05. Investigation.

- (a) With the exception of complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA, the Office shall serve, within 15 days of said filing, a copy thereof upon the respondent, and upon all persons it deems to be necessary parties; and shall make prompt investigation in connection therewith.
- (b) Within 120 days, after service of the complaint upon all parties thereto, the Office shall determine whether, in accord with its own rules, it has jurisdiction; and if so, whether there is probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice.
- (c) If the Office finds, with respect to any respondent, that it lacks jurisdiction or that probable cause does not exist the Director forthwith shall issue and cause to be served on the appropriate parties, an order dismissing the allegations of the complaint.
- (d) The Office shall complete investigations of complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA, within 100 days after filing of the complaint. The Office shall notify the parties in writing of the reasons for not timely completing the investigation, if it is unable to or it becomes impracticable to complete the investigation within 100 days.
- (e) The Office may join a person not named as an additional or substitute respondent upon written notice for complaints alleging unlawful discrimination in residential real estate transactions brought pursuant to this chapter or the FHA. The Office, in the notice to the respondent shall explain the basis for determining that the person is properly joined as a respondent.
- (f) The complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, for complaints alleging unlawful discrimination in residential real estate transactions or violations of the FHA, may elect to have the claims asserted in the complaint decided in a civil action:

- (1) An election of remedies, pursuant to this subsection, shall be made no later than 20 days after the service of a charge, based on a finding of probable cause pursuant to the investigation of the complaint.
 - (2) The person making the election of remedies shall give notice by certified mail to the Director and to all parties to the complaint.
- (g) If a timely election is made pursuant to subsection (f) of this section, the Director shall authorize, not later than 30 days after the election is made, and the Corporation Counsel shall file a civil action on behalf of the aggrieved party in the Superior Court of the District of Columbia. Venue for an action pursuant to this section shall be in the District of Columbia. Any aggrieved party may intervene in this court action. The Court may grant relief pursuant to § 2-1403.16(b) if the court finds that a discriminatory housing practice has occurred or is occurring.

§ 2-1403.06. Conciliation.

- (a) If, in the judgment of the Office, the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation, or persuasion.
- (b) If the Office determines that there exists probable cause to believe that the respondent has engaged or is engaging in an unlawful practice, the parties shall attempt to conciliate the complaint. The Office shall grant the parties up to 60 days within which to reach a conciliation agreement. If the parties fail to execute a conciliation agreement within the time allowed by the Office, the Office shall certify the case to the Commission for a public hearing. The terms of a conciliation agreement may require a respondent to refrain, in the future, from committing specified discriminatory practices, and to take such affirmative action as, in the judgment of the Office, will effectuate the purposes of this chapter; and may include consent, by the respondent, to the entry in court of a consent decree, embodying the terms of the conciliation agreement.
- (c) Upon agreement of all parties to a complaint and upon notice to all parties thereto, a conciliation agreement shall be deemed an order of the Commission, and shall be enforceable as such. Except for the terms of the conciliation agreement, employees of the Office shall not make public, without the written consent of the respondent, information concerning conciliation efforts.
- (d) Repealed.
- (e) The Office shall make public, unless the complainant and respondent agree otherwise and the Director determines that disclosure is not required to further the purpose of this chapter, conciliation agreements alleging unlawful discrimination in residential real estate transactions or violations of the FHA.

§ 12-1403.07. Injunctive relief.

If, at any time after a complaint, has been filed, the Office believes that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Office shall certify the matter to the Corporation Counsel, who shall bring, in the name of the District of Columbia, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions. The appropriate parties shall be notified of such certification and the complainant may initiate independently, or in cooperation with the Corporation Counsel, appropriate civil action to seek a temporary restraining order or preliminary injunction.

§ 2-1403.08. Posting of notice of complaint in housing accommodation.

If a finding of probable cause has been made, as to a complaint of discrimination in housing, and the property owner, or his duly authorized agent, will not agree voluntarily to withhold from the market the subject housing accommodations for a period of 10 days from the date of such finding of probable cause, the Office may cause to be posted on the door of said housing accommodations for a period of 10 days from the date of said finding a notice advising that said accommodations are the subject of a complaint before the Office and that prospective transferees will take such housing accommodations at their peril. Any destruction, defacement alteration or removal of the notice thereof, by the owner or his agents, servants and employees. shall be punishable, upon conviction, by a fine of up to \$300, or by imprisonment for not more than 10 days. or both.

§ 2-1403.09. Service of process.

In all cases where the Office is required to effect service, it shall be accomplished by registered or certified mail, return receipt requested or by personal service and shall otherwise be in accordance with rules of the Office regarding service and notice.

§ 2-1403.10. Notice of hearing.

In case of failure of conciliation efforts, or in advance of conciliation efforts, as determined by the Office, and after a finding of probable cause, the Office shall cause to be issued and served in the name of the Commission, a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of such complaint at a public hearing before I or more members of the Commission or before a hearing examiner, such hearing to be scheduled not less than 10 days or-not more than 30 days after such service and at a place to be specified in such notice. Notice shall be served by registered or certified mail, return receipt requested, or by personal service.

§ 2-1403.11 Hearing tribunal.

- (a) After a complaint has been noticed for hearing, a hearing tribunal consisting of 3

members of the Commission, sitting as the Commission, shall be appointed to make a determination upon such complaint. At the discretion of the Commission, 1 or more hearing examiners may be delegated to hear and report back to the Commission, on any case or question before the Commission.

- (b) A hearing examiner may be an employee of the District government or may be selected from a list of qualified hearing examiners prepared by the Commission. Commission members may serve as hearing examiners. Hearing examiners shall be paid on a per diem basis, while actually sitting and hearing a case: Provided, that funds are available for such purpose.

§ 2-1403.12. Conduct of hearing.

- (a) The hearing shall be conducted in accordance with procedures promulgated pursuant to the Administrative Procedure Act (§ 2-501 et seq.).
- (b) The case in support of the complaint shall be presented by an agent or attorney of the Office.
- (c) Any Commissioner or hearing examiner, who has participated in the investigation, conciliation or processing of a complaint, or has participated in any decision related to the merits of a complaint, may not sit with a hearing tribunal appointed to make a determination upon such complaint.
- (d) Efforts at conciliation by the Office, or the parties, shall not be received in evidence.
- (e) If the respondent fails to answer the complaint, the hearing tribunal, or the hearing examiner designated to conduct the hearing, may enter the default and the hearing shall proceed on the basis of the evidence in support of the complaint. Such default may be set aside only for good cause shown, and upon equitable terms and conditions.

§ 2-1403.13. Decision and order.

- (a)(i) If, at the conclusion of the hearing, the Commission determines that a respondent has engaged in an unlawful discriminatory practice or has otherwise violated the provisions of this chapter, the Commission shall issue, and cause to be served upon such respondent, a decision and order, accompanied by findings of fact and conclusions of law, requiring such respondent to cease and desist from such unlawful discriminatory practice, and to take such affirmative action including but not limited to:
 - (A) The hiring, reinstatement or upgrading of employees, with or without back pay;
 - (B) The restoration to the membership in any respondent labor organization,

admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(C) The extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons;

(D) The payment of compensatory damages to the person aggrieved by such practice;

(E) The payment of reasonable attorney fees;

(E-1) The payment of civil penalties, which shall be deposited in the General Fund, according to the following schedule:

(i) In an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior unlawful discriminatory practice;

(ii) In an amount not to exceed \$25,000 if the respondent has been adjudged to have committed 1 other unlawful discriminatory practice during the 5-year period ending on the date of the filing of this charge; and

(iii) In an amount not to exceed \$50,000 if the respondent has been adjudged to have committed 2 or more unlawful discriminatory practices during the 7-year period ending on the date of the filing of this charge; and

(F) The payment of hearing costs, as, in the judgment of the Commission will effectuate the purposes of this chapter, and including a requirement for a report as to the manner of compliance with such decision and order.

(2) With regard to compensatory damages, civil penalties, and attorney's fees, the Commission shall develop guidelines, which shall be submitted to the Council for review prior to implementation.

(b) If, upon all the evidence, the Commission finds that a respondent has not engaged in any unlawful discriminatory practice, the Commission shall issue and cause to be served on the complainant, an order dismissing the complaint as to such respondent.

(c) Whenever a case has been heard by 1 or more hearing examiners who do not have the power to render a final order or decision, the Commissioners, assigned to decide the case, shall serve upon the parties a proposed order or decision, including findings of fact and conclusions of law, with a notice providing that each party adversely affected may file exceptions and present arguments to the Commissioners, on a date not less than 10 days from the date of service of the proposed order or decision.

(d) Findings of fact and conclusions of law shall be supported by, and in accordance

with. reliable, probative, and substantial evidence.

§ 2-1403.14. Judicial review.

Any person suffering a legal wrong, or adversely affected or aggrieved by an order or decision of the Commission in a matter pursuant to the provisions of this chapter, is entitled to a judicial review thereof, in accordance with § 2-510, upon filing, in the District of Columbia Court of Appeals, a written petition for such review.

§ 2-1403.15. Enforcement of order.

- (a) The decision and order of the Commission shall be served on the respondent, with notice that, if the Commission determines that the respondent has not, after 30 calendar days following service of its order, corrected the unlawful discriminatory practice and complied with the order, the Commission will certify the matter to the Corporation Counsel, and to such other agencies as may be appropriate for enforcement.
- (b) The Corporation Counsel shall institute, in the name of the District, civil proceedings including the seeking of such restraining orders and temporary or permanent injunctions, as are necessary to obtain complete compliance with the Commission's orders. In the event that successful civil proceedings do not result in securing such compliance, the Corporation Counsel shall institute criminal action.
- (c) No enforcement action shall be instituted pending review as provided in § 2-1403.14.
- (d) Nothing in this section shall be construed to deprive any person of rights in the criminal justice process.

§ 2-1403.16. Private cause of action.

- (a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a complaint hereunder; provided, that where the Office has dismissed such complaint on the grounds of administrative convenience, or where the complainant has withdrawn a complaint, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who maintains, in a court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under this chapter may file the same complaint with the Office. A private cause of action

pursuant to this chapter shall be filed in a court of competent jurisdiction within one year of the unlawful discriminatory act, or the discovery thereof, except that the limitation shall be within 2 years of the unlawful discriminatory act, or the discovery thereof, for complaints of unlawful discrimination in real estate transactions brought pursuant to this chapter or the FHA. The timely filing of a complaint with the Office, or under the administrative procedures established by the Mayor pursuant to section 303 [§2-1403.03], shall toll the running of the statute of limitations while the complaint is pending.

- (b) The court may grant any relief it deems appropriate, including, the relief provided in §§ 2-1403.07 and 2-1403.13(a).

§ 2-1403.17. Referral to licensing agencies.

- (a) Whenever it appears that the holder of a permit, license, franchise, benefit, or advantage issued by any agency or authority of the government of the District is a person against whom the Office has made a finding of probable cause pursuant to § 2-1403.05, the Office, notwithstanding any other action it may take or may have taken under the authority of the provisions of this chapter, may refer to the proper agency or authority the facts and identities of all persons involved in the complaint for such action as such agency or authority, in its judgment considers appropriate, based upon the facts thus disclosed to it.
- (b) The Commission, upon a determination of a violation of any of the provisions of this chapter by a holder of, or applicant for any permit, license, franchise, benefit, exemption, or advantage issued by or on behalf of the government of the District of Columbia, and upon failure of the respondent to correct the unlawful discriminatory practice and comply with its order, in accordance with § 2-1403.15(a), shall refer this determination to the appropriate agency or authority. Such determination shall constitute prima facie evidence that the respondent, with respect to the particular business in which the violation was found, is not operating in the public interest. Such agency or authority shall, upon notification, issue to said holder or applicant an order to show cause why such privileges related to that business should not be revoked, suspended, denied or otherwise restricted.